

March 9, 2011

UNIVERSITY HEIGHTS, IOWA

BOARD OF ADJUSTMENT

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A meeting of the University Heights Board of Adjustment was called to order at 5:30 p.m. March 9, 2011. The meeting was called for the purpose of considering a variance application filed by Dorothy Maher with respect to her home at 60 Marietta Avenue. Ms. Maher's variance request seeks a reduction in the minimum front yard (setback) at this property from twenty-five feet to fifteen feet. Present for the meeting were the following: Board Members Russ Boyer, Margaret Donnelly, Michael Flaum, and Larry Wilson; City Attorney Steve Ballard; variance applicant Dorothy Maher; applicant's Engineer, Glen Meisner; and citizens Louise From, Rosanne Hopson, and Pat Yeggy. Board of Adjustment Chair Tom Breese was absent.

The board selected Michael Flaum to act as Chair in Tom Breese's absence.

Attorney Ballard indicated that notice had been given to property all University Heights and Iowa City property owners from the subject property west to George Street; property owners on the east side of George Street between Marietta Avenue and Highland Drive; and property owners on the south side of Highland Drive from George Street to the point where Highland Drive curves to the northeast. Attorney Ballard reported that 4 property owners had sent emails in support of the variance request and no emails or other communications had been received objecting to the request. Applicant Maher also indicated that she has spoken with two other neighbors who indicated orally that they supported the request and that she herself had mailed a letter of notice to the same property owners to whom the official notice from the City Attorney was sent.

Wilson asked whether the question before the board was to approve the particular plans submitted or a setback that might apply to other plans. Attorney Ballard indicated that the application was for a setback. Engineer Meisner indicated that there are sensitive slopes toward the back of this property, and that a retaining wall would be constructed to avoid the building encroaching on those slopes. Engineer Meisner indicated that only the garage is shown as encroaching into the present minimum front yard setback on the plan submitted.

Applicant Maher addressed the 4 points set forth in Attorney Ballard's letter to the board outlining what the board would need to find in order to grant the variance. Her comments were as follows:

1. The requested variance will not be contrary to the public interest. The proposed home will enhance the community and property values, and no neighboring property owners objected when sent notice of the request.

2. Literal enforcement of the existing ordinance will result in an unnecessary hardship because a "reasonable" home cannot be built on the lot given the current required setback and the sensitive slopes toward the rear of the lot. The existing home was built in the 1950s and the planned home will upgrade the housing stock in the community.
3. The requested variance supports the spirit of the existing ordinance because it improves the appearance of the neighborhood and will increase the tax base.
4. The lot represents an unusual physical condition not generally prevalent in the neighborhood and the setback combined with the sensitive areas ordinance prevents a reasonable or sensible arrangement of buildings on the lot.

Engineer Meisner indicated that he had authority to represent that Jeff Hendrickson, who is constructing the Lytham Condominiums immediately to the east of the subject property in Iowa City has no objection to the variance request and, in fact, believes it will enhance the area. Engineer Meisner indicated that the setback from Marietta Avenue for the Lytham Condominiums would be 15 feet, the same distance requested by applicant Maher. Engineer Meisner also indicated that the planned home will be narrower than the existing home but a bit longer.

Attorney Ballard indicated that the zoning ordinance with the current setback requirement was adopted in 1982 and the sensitive areas ordinance was not adopted until 2003. Thus, for a period of time, a homeowner could have met the setback and used a larger portion of the lot by installing building footings and otherwise building on the sloped portion of the lot to the rear. With the adoption of the sensitive areas ordinance, however, Attorney Ballard indicated that construction activities on the rear part of the lot are now largely prohibited.

Board Chair Flaum asked for public comment. Pat Yeggy traced the history of the existing setbacks on Marietta Avenue, explaining that they were part of the original restrictive covenants for this part of the city and had been maintained at 30 feet, including garages. Yeggy asked the board to reject the variance request for the following reasons:

1. Jeff Hendrickson's development is in Iowa City, and this property is in University Heights. Thus, even though the setback in Iowa City might be in line with the requested setback here, that was no reason to approve the variance request.
2. The present neighbors may not object to the requested variance, but future neighbors may well object and it will be too late for them to get any relief.

3. The board should be concerned that other property owners along Marietta Avenue might request variances and that approving the variance request here may set a precedent.

The Board of Adjustment discussed the variance request in light of the comments received. Wilson indicated he believed it was in the spirit of the City's ordinance to rebuild the community's housing stock. He said the house, though somewhat bigger, is not out of scale with other homes in the neighborhood and community. He said the homes to the east, even if they are in Iowa City, would be set back fifteen feet and would be viewed as a continuous neighborhood or part of town, regardless of where the property line is actually located. He said that the ravine would be saved by moving the proposed home forward, and that any future neighbors would know of the condition coming in so that they would not be harmed. He said that the requested variance was consistent with the spirit of the ordinance, saves the ravine, and that he would therefore support it. He inquired whether the board could condition a variance to say that only the garage could be closer than twenty-five feet. Attorney Ballard indicated that the board could make such a condition.

Donnelly said that she agreed with many of Wilson's points and would not repeat them. She said that the proposed new home would upgrade the housing in the neighborhood and that she would support the variance request.

Boyer also said that he agreed with many of Wilson's points and would not repeat them.

Flaum indicated that the issue of setbacks is a very serious consideration for the Board of Adjustment but that the present application represented good reason to make an exception. He also commented that he agreed with and adopted the points made by Wilson.

MOTION by Wilson, seconded by Donnelly, to approve the requested variance to change the minimum front yard at 60 Marietta Avenue from twenty-five feet to fifteen-feet but only to the extent that the garage of the home would be permitted to be as close as fifteen feet to the property line, based upon the board's findings that the variance would not be contrary to the public interest; literal enforcement of the ordinance would result in an unnecessary hardship because of the sensitive areas condition; the variance will support the spirit of the zoning ordinance; and the variance is warranted based upon exceptional or unusual dimensional configuration or physical condition of the lot not generally prevalent in the neighborhood, with such condition preventing a reasonable or sensible arrangement of buildings on the lot.

Flaum asked applicant Maher whether the condition restricting the variance only to the garage was acceptable to her and her Engineer. Applicant Maher indicated that the condition was acceptable.

The board voted and the motion was adopted unanimously.

MOTION by Donnelly, seconded by Wilson to adjourn. The Board of Adjustment adjourned its meeting at 6:10 p.m.

Attest _____
Steven E. Ballard,
City Attorney

Approved _____
Michael From, Chair
University Heights
Board of Adjustment

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